

**T.H., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Corning, NY, Employer**

### Case Submitted on the Record

## DECISION AND ORDER

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On February 8, 2019 appellant, through her representative, filed a timely appeal from a December 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish right shoulder conditions causally related to the accepted factors of her federal employment.

## **FACTUAL HISTORY**

On September 12, 2017 appellant, then a 48-year-old rural mail carrier, filed a notice of recurrence (Form CA-2a) alleging that, on September 7, 2017, she sustained a recurrence of disability due to a July 18, 2017 employment-related right shoulder injury.<sup>3</sup> In an accompanying statement, she explained that her medical condition had never changed since her return to work. Appellant claimed that she had physical pain on a daily basis due to her injury. She noted that working above her shoulder, carrying heavy objects, and reaching caused great discomfort for which she sought medical treatment. In addition, appellant was unable to obtain help with her daily work duties which involved casing mail above her shoulders, reaching for mailboxes, and loading and unloading a long-life vehicle (LLV). She filed wage-loss compensation claims (Form CA-7) for total disability commencing February 17, 2018.

Appellant submitted a progress note dated August 23, 2017 by Dr. Theodore F. Them, an occupational medicine specialist. Dr. Them noted that appellant presented for follow-up of her right shoulder injury. Appellant had been performing full-duty work. Dr. Them discussed findings on physical examination. He provided assessments of right shoulder strain, subsequent visit suspect injury to supraspinatus or infraspinatus muscle/tendon, and strain of right acromioclavicular (AC) joint, subsequent visit. Dr. Them advised that appellant may continue to work without restrictions.

Appellant also submitted a right upper extremity magnetic resonance imaging (MRI) scan report dated August 29, 2017, in which Dr. Ananth Ravi, a diagnostic radiologist, noted a history that on July 18, 2017 appellant fell onto her right shoulder at work. Dr. Ravi provided an impression of negative full-thickness cuff tear, moderate supraspinatus, infraspinatus, and intra-articular biceps tendinopathy. He also provided impressions of moderate-to-severe AC joint osteoarthritis and posterior superior labral tear. Dr. Ravi further provided an impression of impaction fracture of the posterior aspect of the humeral head with associated bone marrow contusion. There was an ill-defined appearance with edema and probable tearing of organomegaly or the anterior inferior labrum. The bony cortex within the anterior-inferior portion of the glenoid was not well defined, and subtle, a minimally cortical bone injury was not excluded.

Karol White, a certified family nurse practitioner, indicated in a progress note dated September 7, 2017 that appellant presented for follow-up of her right shoulder injury. She provided impressions of right muscle strain, subsequent encounter and labral tear of the right shoulder, subsequent encounter. Ms. White also provided impressions of closed fracture of the proximal end of the right humerus with delayed healing, unspecified fracture morphology,

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<sup>3</sup> Appellant had filed a prior traumatic injury claim (Form CA-1) which was assigned OWCP File No. xxxxxx871, for an employment injury to her right shoulder. OWCP accepted the claim for right shoulder sprain and right acromioclavicular joint strain. Appellant filed wage-loss compensation claims (Form CA-7) for total disability. OWCP has not administratively combined appellant's claims.

subsequent encounter, strain of the muscle(s) and tendon (s) of the rotator cuff of the right shoulder, subsequent encounter, and arthritis of the AC joint. She advised that appellant may return to work with restrictions on the day of her examination. Ms. White, in a duty status report (Form CA-17) dated September 20, 2017, noted a history that on July 18, 2017 appellant fell onto a sidewalk and injured her right shoulder. She advised appellant to return to work with restrictions.

In progress notes dated September 18 and October 30, 2017, and January 4, 2018, Dr. Joel C. McClurg, an orthopedic surgeon, indicated that appellant presented for a right shoulder evaluation. He noted that she reported that she never had problems or complaints with her right shoulder until she tripped and fell onto her outstretched arm in a driveway while delivering a package to a customer on July 18, 2017. Appellant immediately experienced neck and shoulder pain. Dr. McClurg provided findings on physical examination and reviewed diagnostic test results. He diagnosed right shoulder injury, initial encounter, sprain of shoulder and upper arm, right, subsequent encounter, biceps tendinitis on the right, AC sprain, right, subsequent encounter, and impingement syndrome of the right shoulder. In the October 31, 2017 report, Dr. McClurg opined that this was clearly a workers' compensation injury in a patient without prior shoulder problems. He maintained that appellant's mechanism of injury and symptoms were entirely consistent and related to her fall, noting that she had no prior complaints, injuries, or treatment of the right shoulder before her recent workers' compensation injury. Dr. McClurg, in a work description/medical restriction/capabilities form dated September 7, 2017, diagnosed fracture of the right humerus and tendinitis. He noted that appellant was performing her usual work duties and listed her restrictions. In a subsequent work description/medical restriction/capabilities form dated September 18, 2017, Dr. McClurg indicated that appellant's status was not working. He again listed her restrictions. In additional work description/medical restriction/capabilities forms dated October 31 and November 27, 2017 and January 4, 2018, Dr. McClurg diagnosed shoulder sprain/shoulder injury. He initially reiterated that appellant's status had not changed, but on January 4, 2018, he advised that her status had improved.

By development letter dated February 26, 2018, OWCP informed appellant that it had administratively converted her recurrence claim into a new occupational disease claim. It requested that she respond to an attached development questionnaire in order to substantiate the factual element of her claim and submit additional medical evidence to establish a diagnosed condition causally related to her federal employment. OWCP also requested that the employing establishment provide comments from a knowledgeable supervisor about the accuracy of appellant's statements, a copy of her position description, precautions taken to minimize effects of the activities alleged, and the frequency and duration of the tasks requiring physical exertion. It afforded appellant and the employing establishment 30 days to respond.

In narrative statements dated March 4 and 19, 2018, appellant responded to OWCP's development questionnaire. She described the circumstances surrounding her July 18, 2017 work-related injury and subsequent medical treatment she received. Appellant noted that she was totally disabled from work until she returned to her rural mail carrier position on July 25, 2017. Her work duties included extreme repetitive work above her head intermittently for six hours a day and pulling and pushing intermittently for eight hours a day. Appellant pulled letters and flats from various locations and cages on the workroom floor. She also cased and pulled mail in and out of her workstation case approximately two to four hours a day, five days a week. In addition, appellant lifted and carried mail equipment, continuously carried up to 40 pounds, and

intermittently carried 70 pounds, eight hours a day, five days a week. She noted that a home business received over 20 packages weighing 30 to 45 pounds per package. Appellant lifted these packages into her government vehicle and unloaded and carried them to the customer's doorstep. For each and every delivery she had to stop and reach to her left and across her body to retrieve the mail and then back across her body and extend out away from her body to deliver the mail into a mailbox. Appellant maintained that this activity alone amounted to 586 customers and was performed five days a week without consideration of delivery of a parcel or an extra box hold such as a shopper, which greatly multiplied her arm movements. She believed that the original trauma to her shoulder on July 18, 2017, which was diagnosed as a right shoulder sprain, was aggravated upon her return to work following this injury. Appellant related that her specific route was evaluated at eight and one-half hours a day. She worked five days a week with intermittent overtime. Appellant worked 27 days out of the 50 days that had elapsed from her original traumatic work-related injury until the filing date of her recurrence claim. She twisted and performed simple grasping continuously eight hours a day and drove a vehicle seven hours a day. Appellant described the activities she performed outside of her federal employment.

Appellant submitted additional medical evidence. An emergency department provider note dated July 18, 2017 and attested to by Dr. Charles A. Morrow, a Board-certified family practitioner, indicated that appellant fell on her outstretched arm on that day. Physical examination findings were discussed. Appellant was assessed as having a sprain of the right shoulder, unspecified shoulder sprain type, initial encounter.

A progress note dated July 24, 2017 by Dr. Them reported a history of appellant's July 18, 2017 employment injury and examination findings. He provided an assessment of right shoulder strain, initial visit-involving the bicipital tendon origin and infraspinatus tendons. Dr. Them indicated that appellant could return to work with restrictions.

An undated and unsigned Form CA-17 report noted a history that appellant strained her right shoulder on July 18, 2017 and her usual work requirements.

In an additional work description/medical restriction/capabilities form dated March 10, 2018, Dr. McClurg reiterated his diagnosis of right shoulder injury. He also advised that appellant's status was unchanged.

Postmaster B.C., in a letter dated March 19, 2018, responded to OWCP's development letter. She acknowledged that appellant's narrative was accurate. Postmaster B.C. submitted a copy of appellant's official position description and listed the physical requirements of the position.

OWCP thereafter received an additional progress note dated March 19, 2018 from Dr. McClurg noted that appellant returned to apparent full-duty work on July 25, 2017, which exacerbated her symptoms. Appellant was placed off work due to an inability to accommodate her with light-duty or partial-duty work. Dr. McClurg discussed physical examination findings and reiterated his prior diagnoses of sprain of shoulder and upper arm, right, subsequent encounter, biceps tendinitis on the right, AC sprain, right, subsequent encounter, and impingement syndrome of the right shoulder. He maintained that appellant's right shoulder sprain, biceps tendinitis, and right AC sprain were sustained on July 18, 2017 and aggravated by her unrestricted return to work.

on July 25, 2017. Dr. McClurg concluded that this appeared to be a clear case of a work-related injury, exacerbated by an early return to work and delays in approval of diagnostics and treatment.

By decision dated April 4, 2018, OWCP denied appellant's occupational disease claim finding that she had not submitted a rationalized medical opinion explaining how her diagnosed right shoulder conditions were causally related to the accepted factors of her federal employment.

On October 1, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence from Dr. McClurg. In an August 27, 2018 progress note, Dr. McClurg reexamined appellant and repeated his diagnoses of impingement syndrome, labral tear, infraspinatus and supraspinatus tendinitis or tendinopathy, AC joint osteoarthritis, and humeral impaction fracture of the right shoulder. He related a history of his own treatment of appellant beginning September 18, 2017. Dr. McClurg noted that she had a prior history of a work-related right shoulder injury due to a fall on July 18, 2017 which was accepted for right shoulder strain under OWCP File No. xxxxxx871. He reviewed a description of appellant's rural carrier position. Dr. McClurg provided a detailed description of the nature, symptoms, and medical treatment of the diagnosed right shoulder conditions. He indicated that appellant presented symptoms that would reasonably be expected contributable to an occupational disease claim as defined by FECA. Dr. McClurg maintained that the long-term workplace exposure or physiological mechanism of the acute stress caused by the forceful dominate right shoulder motions throughout her workday over a 25-year span, such as, physical exertion required of her position which involved repetitive handling and lifting sacks of mail weighing up to 70 pounds, carrying 45 pounds and more, reaching above the shoulder which required the use of her fingers and both hands, up to eight hours of straight pulling, bending/stooping, twisting, pushing/pulling, climbing, walking, and standing throughout her eight-hour tour of duty, five days a week. He related that, in other words, the forceful repetitive in nature occupational trauma related to her dominate right shoulder motions throughout her workday over 25 years was the mechanism driving the right shoulder full-thickness supraspinatus tear. Dr. McClurg reasoned that the repetitive motion trauma started with the transfer of energy to the body from an outside force affecting joints and muscles that connected them. He maintained that it was well established that the outside force that transferred energy was the forceful dominate right shoulder motions throughout appellant's workday, such as, lifting sacks of mail weighing up to 70 pounds and carrying 45 pounds and more that required frequent shoulder movement, such as, repetitive lifting and overhead movements consistently rotating and twisting her shoulders from right to left. Dr. McClurg advised that the diagnosed conditions listed above were precipitated by factors required by appellant's employer. Based on his years of medical experience, medical treatment, and observation of her, and his review of all related and relevant medical documents, interpretations of objective diagnostic tests, and physical examination, and the absence or any other independent causative factors, it he unequivocally opined within a reasonable medical certainty that the repetitive arduous requisites of her rural carrier position was the only reasonable explanation for her right shoulder injuries. As such, Dr. McClurg concluded that appellant had been temporarily totally disabled beginning September 7, 2017. He further concluded that she continued to be temporarily totally disabled, as defined by FECA until such time as he found it medically appropriate to set work tolerance limitations. In a work capacity evaluation (Form OWCP-5c) dated August 27, 2018, Dr. McClurg indicated that, while appellant was not capable of performing her usual job without restrictions, she could work eight hours a day with restrictions commencing September 23, 2018.

By decision dated December 27, 2018, OWCP denied modification of its April 4, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>7</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>8</sup> OWCP's procedures require that where recurrent disability from work is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship.<sup>9</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>10</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>8</sup> *Id.*; *see also R.L.*, Docket No. 19-0444 (issued July 29, 2019).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

<sup>10</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

occurrence of the disease or condition;<sup>11</sup> and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>12</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>13</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant filed a notice of recurrence of disability commencing September 7, 2017 after returning to work on July 25, 2017 following the accepted July 18, 2017 employment-related right shoulder injury. She thereafter filed wage-loss compensation claims for total disability. In a claim development letter dated February 26, 2018, OWCP informed appellant that it had *sua sponte* converted her claim from a recurrence claim into an occupational disease claim for a new injury.

OWCP's procedures provide the proper steps required for the conversion of a claim for FECA benefits when it determines that a claimant has filed an improper claim form.<sup>14</sup> This procedure requires that the claim be developed on the claim form filed by claimant with questions sent to him or her to determine the type of benefits actually sought. The Board finds that OWCP failed to follow its procedures when it administratively converted appellant's claim from a recurrence claim to a new occupational disease claim. As appellant filed a notice of recurrence and subsequent claims for wage-loss compensation within 90 days of her return to work, and because she noted continuing right shoulder conditions following this return to employment, OWCP should have developed the claim as one for a recurrence under OWCP File No. xxxxxx871.

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>15</sup>

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<sup>11</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>12</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>13</sup> *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2) (June 2011); *Richard D. Wray*, 45 ECAB 758 (issued July 8, 1994) (If the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, OWCP should convert the claim to the proper type of claim and notify the claimant and employing establishment of the conversion.); *C.f. S.N.*, Docket No. 12-1814 (issued March 11, 2013).

<sup>15</sup> *O.S.*, Docket No. 18-1549 (issued February 7, 2019); *G.C.*, Docket No. 18-0842 (issued December 20, 2018); *see also Jimmy A. Hammons*, 51 ECAB 219 (1999).

Consequently, the Board will remand the case for OWCP to properly adjudicate the claim for recurrence applying the appropriate procedures for a claimed recurrence within 90 days of a return to work.<sup>16</sup> Upon return of the case record OWCP shall administratively combine this file with OWCP File No. xxxxxx871. After such further development as may be deemed necessary, it shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 9, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> See *supra* note 9.